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General and complete disarmament

Letter dated 12 March 2002 from the Permanent Representative of Mongolia to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to transmit herewith to you the report of the United Nations-sponsored non-governmental expert group meeting on ways and means of strengthening Mongolia's international security and nuclear-weapon-free status, held in Sapporo, Japan, on 5 and 6 September 2001 (see annexes I, II and III).

I should be grateful if you would have the present letter and its annexes circulated as a document of the General Assembly under the item entitled "General and complete disarmament".

(*Signed*) Jargalsaikhany **Enkhsaikhan**
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Annex I to the letter dated 12 March 2002 from the Permanent Representative of Mongolia to the United Nations addressed to the Secretary-General

Ways and means of strengthening Mongolia's nuclear-weapon-free status: report of the United Nations-sponsored Expert Group Meeting

Sapporo, Japan, 5-6 September 2001

Initial considerations

1. The experts started their deliberations by addressing three questions:

(a) Does Mongolia currently have internationally recognized nuclear-weapon-free status?

(b) If it does, how has it been expressed legally?

(c) If it does not, what could be done to internationalize its status?

2. It was noted that Mongolia had signed an INFCIRC/153 safeguards agreement with the International Atomic Energy Agency and was discussing signing the Additional Protocol. However, these actions implemented its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons rather than the additional obligations implied by nuclear-weapon-free status.

3. It was also noted that the lack of a border with any of the States in the proposed Central Asian Nuclear-Weapon-Free Zone made it politically impossible to acquire such status through this route.

4. Although Mongolia had passed domestic legislation to implement its nuclear-weapon-free status, China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America, the five nuclear-weapon States that are party to the Non-Proliferation Treaty, had felt unable to comment on that, as they regarded it as a purely domestic matter.

5. It was also noted that doubts existed over whether a United Nations Security Council resolution, or a statement by its President, constituted a legally binding instrument in that context.

6. The experts therefore accepted that Mongolia did not currently have internationally recognized nuclear-weapon-free status, and that they should focus their efforts on identifying options through which it could achieve such status.

The unique character of any legal agreement on Mongolia's nuclear-weapon-free status

7. It was pointed out that any internationally recognized nuclear-weapon-free status for Mongolia would be without precedent, in that it would cover its landlocked territory alone and not that of its two neighbouring States, China and the Russian Federation. That was because any restrictions on the movement or basing of

their nuclear weapons or nuclear-weapon systems, including within their border areas, was extremely unlikely to be acceptable to them. That was unlike any of the five existing nuclear-weapon-free-zone treaties, where the territory of all the parties or potential parties were within the zone.

8. Any legal instrument to recognize Mongolia's nuclear-weapon-free status would therefore have two classes of State with differing duties and obligations. Mongolia, as a nuclear-weapon-free State, would need to commit itself not to allow its territory to be used for the stationing, storage or transit of nuclear explosive devices (and possibly also their delivery systems, namely, nuclear-weapon systems). China, the Russian Federation (and possibly the other nuclear-weapon States that are party to the Non-Proliferation Treaty to avoid discrimination among those States) would have to commit themselves not to use or seek to use Mongolian territory for the stationing, storage or transit of nuclear explosive devices or nuclear-weapon systems.

The elements of a legally binding international instrument recognizing Mongolia's nuclear-weapon-free status

9. In addressing the type of diplomatic process that might produce agreement to give international recognition to Mongolia's nuclear-weapon-free status, the experts recognized that answers would first need to be provided for several linked questions:

(a) What would be the nature and scope of the commitments contained in the legal instrument providing recognition, and would it, as suggested above, discriminate between those of Mongolia and the relevant nuclear-weapon States that are party to the Non-Proliferation Treaty?

(b) How many States would be involved in the legal instrument: China, Mongolia and the Russian Federation alone; China, Mongolia and the Russian Federation as the parties to the instrument, with the other nuclear-weapon States making similar commitments in a linked protocol; Mongolia and the five nuclear-weapon States that are party to the Non-Proliferation Treaty as parties; or some other combination of States and Mongolia?

(c) What type of legal instrument would be involved: a treaty; a treaty plus a protocol; a protocol to the Non-Proliferation Treaty, a memorandum of understanding; two parallel bilateral instruments one between Mongolia and China and one between Mongolia and the Russian Federation; a trilateral instrument between Mongolia, China and the Russian Federation; or a multilateral instrument between Mongolia and the five nuclear-weapon States that are party to the Non-Proliferation Treaty?

(d) What duties and obligations other than non-stationing, storage and transit of nuclear explosive devices and/or nuclear-weapon systems would be involved: unconditional or conditional negative and/or positive security assurances; nuclear waste non-dumping commitments; commitments not to test nuclear devices; commitments of a similar nature related to other weapons of mass destruction, their delivery systems and/or conventional forces and armaments?

(e) What verification/non-compliance/assurance provisions would the legal instrument contain: none (as in the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin

Weapons and on Their Destruction); challenge inspections in relation to Mongolian territory by China and the Russian Federation (and other nuclear-weapon States that are party to the Non-Proliferation Treaty?); fact-finding arrangements as in the South-East Asian Nuclear-Weapon-Free Zone; or regular meetings of a compliance commission?

Recommendations: alternative models of international nuclear-weapon-free status legal instruments

10. Discussions among the experts led to the emergence of two possible polar types of nuclear-weapon-free status legal instrument that might be applicable in the case of Mongolia:

(a) A minimalist model, which might only consist of commitments (made between China, Mongolia and the Russian Federation) on non-stationing, storage and transit of nuclear explosive devices on Mongolian territory;

(b) A maximalist model, which would cover a wide range of Mongolian security threats, and contain extensive provisions in areas such as security assurances; the testing of nuclear explosive devices; the dumping of nuclear waste; other weapons of mass destruction and their delivery systems; conventional military capabilities; and non-military threats.

11. It was recognized that between those two extremes were many combinations and possibilities whose attractiveness would depend on the objectives and interests of the State parties.

12. A minimalist legal instrument recognizing Mongolia's nuclear-weapon-free status might consist of:

(a) A preamble setting out Mongolia's aims in seeking such an instrument;

(b) An operational paragraph in which Mongolia would commit itself to prevent/not to allow the stationing, storage or transit of nuclear explosive devices on or across its territory;

(c) An operational paragraph in which China and the Russian Federation would commit themselves not to station, store or transit their nuclear explosive devices across the territory of Mongolia, or seek to do so;

(d) Operative paragraphs on, inter alia, duration, termination, definitions, entry into force.

13. A possible maximalist legal instrument recognizing Mongolia's nuclear-weapon-free status might involve:

(a) A preamble similar to paragraph 12 above;

(b) An operational paragraph in which Mongolia would commit itself not to allow the stationing, storage or transit of foreign troops and equipment, and nuclear and other weapons of mass destruction and their delivery systems on or across its territory;

(c) An operational paragraph in which the five nuclear-weapon States that are party to the Non-Proliferation Treaty would commit themselves not to station,

store or transit their troops and equipment and nuclear and other weapons of mass destruction and their delivery systems on or across Mongolian territory;

(d) Operative paragraphs on the non-testing of nuclear devices on Mongolian soil;

(e) Operative paragraphs on the non-dumping of nuclear waste on Mongolian soil;

(f) Operative paragraphs on the creation of verification and non-compliance mechanisms in relation to the instrument;

(g) Operative paragraphs on, inter alia, duration, termination, definitions, entry into force.

Conclusions

14. The view was put forward that if Mongolia wished to have its nuclear-weapon-free status expressed in a legal form, it might best do so in a rapid and simple manner by concentrating on a minimalist, focused agreement with China and the Russian Federation.

15. It was also pointed out that a more comprehensive agreement covering other weapons of mass destruction, delivery systems and conventional forces and armaments would avoid some of the negative resonances with past and present debates over nuclear-weapon-free zones and spaces that were perceived to exist by some member States of the North Atlantic Treaty Organization, while generating the desired effects in the nuclear area. However, such an agreement would possibly take longer to negotiate and involve more complex negotiations.

Annex II to the letter dated 12 March 2002 from the Permanent Representative of Mongolia to the United Nations addressed to the Secretary-General

Mongolia's proposal

1. Make reference to the Basic elements that was proposed to P5[a] in 1999.

2. To welcome and support Mongolia's nuclear-weapon-free status as a unilateral measure to ensure the total absence of nuclear weapons on its territory, bearing in mind its unique conditions, as a concrete contribution to promoting the aims of nuclear non-proliferation and a practical contribution to promoting stability and predictability in the Non-Proliferation Treaty regime.

3. To recognize that the Law of Mongolia on its nuclear-weapon-free status, adopted on 3 February 2000 by the State Great Hural of Mongolia, can be a basis for Mongolia's further consultation with P5.

4. United Nations General Assembly resolutions 53/77 D and 55/33 S, adopted without a vote, provide Mongolia and other Member States with useful guidelines for the promotion of Mongolia's international security and nuclear-weapon-free status on the international level.

5. The need to work on a legally binding instrument on Mongolia's status.

6. In accordance with the General Assembly resolution:

(a) To respect Mongolia's independence, sovereignty and territorial integrity, the inviolability of its borders, its independent foreign policy and its nuclear-weapon-free status;

(b) To refrain from the threat or use of force, including that of nuclear weapons, against the territorial integrity and political independence of Mongolia.

7. To find the appropriate ad hoc mechanism of verification of compliance with Mongolia's nuclear-weapon-free status.

8. To find the appropriate security arrangement to make Mongolia's security and nuclear-weapon-free status an important element of a regional or subregional arrangement.

9. To support Mongolia's good neighbourly and balanced relations with its neighbours as an important element of strengthening regional peace, security and stability.

[a] The five nuclear-weapon States that are party to the Non-Proliferation Treaty (China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America).

Annex III to the letter dated 12 March 2002 from the Permanent Representative of Mongolia to the United Nations addressed to the Secretary-General

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